IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4355 of 1989

with

MISC CIVIL APPLICATOIN NO.6666 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJ STATE ROAD TRANSPORT CORPN

Versus

PRAJAPATI GOPALBHAI ATMARAM

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Appearance:

1. Special Civil Application No. 4355 of 1989

MR PRANAV DESAI for Petitioner No. 1

MR AR LAKHIA for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/05/2002

ORAL JUDGEMENT

Heard Mr.Pranav G. Desai, learned advocate appearing on behalf of the applicant - petitioner Corporation. Present Misc. civil application is filed

by the original petitioner with prayer to recall the order passed by this Court on 11th April, 2002, where by the main matter has been ordered to be dismissed in default.

Considering submissions of learned advocate Mr.Desai and the averments made in this application, present misc. civil application is allowed. The order passed by this Court dated 11th April, 2002 in SCA No.4355 / 1989 is hereby recalled with all prayers on record on the date of order and accordingly, the main matter is restored to its original number. This Misc. Civil Application stands disposed of accordingly.

Since this Court has restored the main matter to its original number and file, this Court has heard learned advocate Mr.Pranav G. Desai for petitioner Corporation and Mr.A.R.Lakhia for respondent in connection with main matter.

The petitioner Corporation has challenged the award passed by the Special Labour Court, Ahmedabad in Reference No.6223 / 1984 dated 25th January, 1989, wherein the labour court has directed the petitioner Corporation to reinstate the respondent workman in the post other than the post of Conductor, where handling of cash is not involved and to protect the pay of the respondent workman but not granted backwages of the interim period. The labour court has also imposed punishment of stoppage of two increments with cumulative effect.

Initially this Court has issued notice and thereafter RULE on 18th December, 1990. This Court has not granted any interim stay, against reinstatement of the respondent workman. Learned advocate Mr.Desai has submitted that the respondent workman while working as Conductor had recovered fare from nine passengers of different groups which came to Rs.3.80 ps and on the basis of the said misconduct committed by the respondent workman, chargesheet was served and after completion of the departmental inquiry, the workman came to be dismissed from service on 11th March, 1983. Learned advocate Mr.Desai has submitted that before the labour court, the respondent workman has not challenged legality and validity of the departmental inquiry. Learned advocate Mr.Desai has also pointed out that before the labour court, the advocate who appeared on behalf of the respondent workman had requested the labour court to impose some lighter punishment on the respondent workman while exercising the powers under Section 11-A o f the I.

D. Act, 1947. Learned advocate Mr.Desai has also pointed out that the labour court has committed gross error in coming to the conclusion that Rs.3.80 ps is small amount and therefore, punishment is harsh and unjustified. He has also submitted that past record was bad and the workman was dismissed from service and thereafter, he was reinstated as fresh employee by the Corporation and even though the labour court has granted reinstatement to the respondent workman.

Learned advocate Mr.Lakhia for respondent workman has submitted that the labour court has rightly appreciated the facts and evidence which are on record before the labour court and come to the conclusion that from nine passengers of different group though the respondent workman had recovered the fare or Rs.3.80 ps and not issued the tickets at the time of checking but the labour court has granted reinstatement not on the post of Conductor but other than the post of conductor. He also submits that the labour court has rightly applied its mind in respect of merits while not only denying full backwages towards penalty but also imposed punishment of stoppage of two increments with cumulative effect considering the gravity of misconduct. However, learned advocate Mr.Lakhia has submitted that this Court while issuing RULE has not granted any interim stay against reinstatement and therefore as consequence thereof, the respondent workman was reinstated in service since twelve years back and he has been working with the petitioner Corporation. He also submits that initially the respondent workman was reinstated on the post of Body Fitter and recently, two years back, promotion has been given to the respondent workman. He also submitted that from the date o f reinstatement in pursuance of the award in question, the service record of the respondent workman is good. Mr.Lakhia also submits that Special Civil Application No.8047 / 1989 was filed by the workman challenging denial of backwages but said petition h as been dismissed by this Court. Therefore, he submits that considering subsequent developments, present petition requires to be dismissed.

I have considered submissions of the learned advocates for the parties. The respondent workman was working as Conductor on 9th September, 1982 on route from Radhanpur to Radhanpur Railway Station, at that time, his bus was checked by the checking staff and it was found that in all from nine passengers of different groups the respondent workman had recovered the fare of Rs.3.80 ps and not issued the tickets upto checking point. Before the labour court, statement of claim was filed by the

respondent wrokman vide Exh.4 and written statement was filed by the Corporation vide Exh.5. Thereafter, the respondent workman had filed Purshis Exh.23 not challenging the legality and validity of the departmental inquiry and documentary evidence produced by the petitioner Corporation vide Exh.6 and the same were exhibited with the consent of the learned advocate of the respondent workman. Thereafter, before the labour court, either side had not led any oral evidence and ultimately, the labour court has examined the merits of the matter. The aspect of misconduct in question has been discussed by the labour court in its award in para 12, which reflects that the labour court has considered that looking to the small amount involved in the present misconduct and the past record of the respondent workman, the labour court considered it fit not to reinstate the workman in the post of Conductor but to reinstate the workman in the post other than conductor. Considering all these aspects, the labour court has exercised the powers under Section 11-A of the I.D.Act, 1947 and the labour court has also denied the total backwages of the interim period from 11th March, 1983 to 25th January, 1989, in other words, denied backwages for about six years and over and above imposed punishment of stoppage of two increments with cumulative effect.

This Court has perused the entire award passed by the labour court. Considering the totality of the facts and circumstance of the case, in view of this Court, while granting the relief in favour of the respondent workman, the labour court has not committed any error. One aspect which appeals to this Court that initially this Court while admitting the matter, had not granted any stay against reinstatement and therefore, the petitioner Corporation has reinstated the workman in service of R.C.Body Fitter and more than 12 years have passed by now. Thereafter, recently some two year back, the respondent workman has been promoted to higher post. Considering this fact as well as the fact that very same award has been challenged by the respondent workman against denial of full backwages in SCA No.8047 / 1989 which came to be dismissed by this Court, according to my opinion, the labour court has not committed any error while passing the award under challenge. As such, there is no jurisdictional error nor any procedural irregularity seems to have committed by the labour court and therefore, no interference of this Court is warranted in the facts of this case by this Court while exercising the powers under Article 226 and 227 of the Constitution.

Therefore, there is no substance in this petition and the same is rejected accordingly. Rule discharged. No order as to costs.

Direct Service is permitted to respondent workman.

Date : 3-5-2002 [ H. K. RATHOD, J.]

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